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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/017,534

10/18/2001

Isaac Ostrovsky

265/222

8068

34313

7590

12/16/2004

ORRICK, HERRINGTON & SUTCLIFFE, LLP

4 PARK PLAZA

SUITE 1600

IRVINE, CA 92614-2558

EXAMINER

CONNOLLY, PATRICK J

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,534

Applicant(s)

OSTROVSKY ET AL.

Examiner

Patrick J Connolly

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-63 and 74-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-63 and 74-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The following action replaces Paper 09242004 as a more complete response to the amendment filed September 02, 2004. All the claims have now been addressed in the following action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-52, 58-63 and 74-87 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-20, 22-25, 27-37 and 41-48 of copending Application No. 10/020,040. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

As to claims 1 and 3-15, copending claims 11-25 and 27 of '040 are broader in scope and therefore already include the limitations of the pending claims.

As to claims 16-21, copending claims 11-25 and 27 of '040 are broader in scope and therefore already include the limitations of the pending claims.

As to claims 22-32, copending claims 32-37 of '040 are broader in scope and therefore already include the limitations of the pending claims.

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As to claims 33-52, copending claims 32-37 of '040 are broader in scope and therefore already include the limitations of the pending claims.

As to claims 58-63, copending claims 11-25 of '040 are broader in scope and therefore already include the limitations of the pending claims.

As to claims 74-87, copending claims 41-49 of '040 are broader in scope and therefore already include the limitations of the pending claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

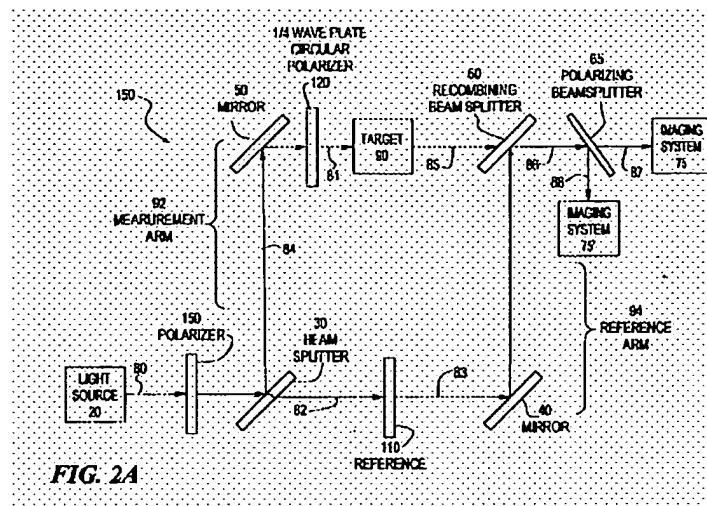
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,883,717 to DiMarzio et al (hereafter DiMarzio).

As to claim 53, DiMarzio teaches an interferometer including (see Figure 2A below):

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a short coherence light source (20, see also column 5, lines 29-31);

a first beamsplitter (30);

a second beamsplitter (60);

means for introducing an optical path difference into the reference arm (110); and

first and second detectors (75, 75').

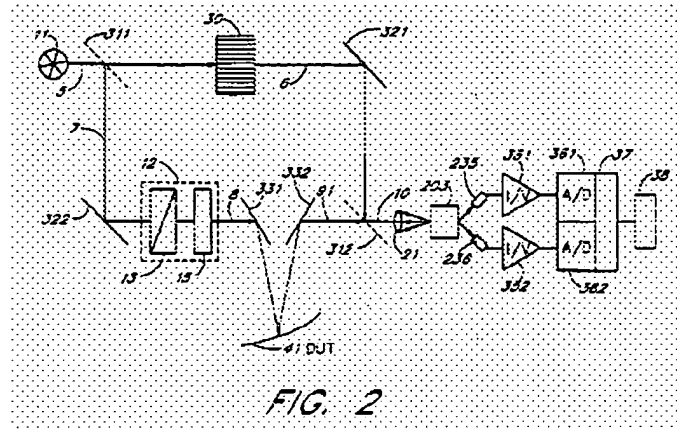
DiMarzio does not teach separate polarization filters for each detector, but instead teaches a polarizing beamsplitter for separating different polarizations for detection. It is well known in the art that a polarizing beamsplitter is functionally equivalent to a non-polarizing beamsplitter and polarization filter combination and it would have been obvious to one of ordinary skill in the art to use either set up in the interferometer of DiMarzio.

As to claim 54, DiMarzio teaches many options for imaging systems 75 and 75', including a CCD camera (see column 3, lines 45-53).

As to claim 55, DiMarzio teaches signal processing, in the form of a computer system (see column 3, lines 45-53).

Claims 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMarzio as applied to claims 53-55 above, in further view of U.S. Patent No. 5,619,325 to Yoshida (hereafter Yoshida).

Yoshida teaches an interferometer including (see Figure 2, below):



a coherent light source;
a first beamsplitter;
a second beamsplitter;
a diffraction grating for introducing an optical path difference into the reference path (30); and
a polarization analyzing arrangement for detecting separated polarizations from a recombined beam (203, 235, 236).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the diffraction grating of Yoshida with the imaging interferometric apparatus of DiMarzio so as to achieve a higher measurement speed and resolution as described in the summary of invention (columns 3-5).

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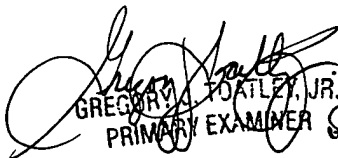
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J Connolly whose telephone number is 571.272.2412.

The examiner can normally be reached on 9:00 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J Toatley, Jr. can be reached on 571.272.2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

pjc mcl
12.10.2004


GREGORY J. TOATLEY, JR.
PRIMARY EXAMINER 571.2877